**UNITED STATES DISTRICT COURT**
**NORTHERN DISTRICT OF ILLINOIS**

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| IN RE KRAFT HEINZ SECURITIES LITIGATION | Case No. 1:19-cv-01339<br><br>Honorable Jorge L. Alonso |

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF SETTLEMENT AND PLAN OF ALLOCATION**

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Court-appointed Lead Plaintiffs Sjunde AP-Fonden and Union Asset Management Holding AG, and additional named plaintiff Booker Enterprises Pty Ltd. (collectively, "Plaintiffs"), respectfully submit this memorandum of law in support of their motion, pursuant to Federal Rule of Civil Procedure ("Rule") 23, for: (i) final approval of the proposed settlement of this Action on the terms set forth in the Stipulation and Agreement of Settlement dated May 2, 2023 (ECF No. 475-3) ("Stipulation"); and (ii) approval of the proposed plan for allocating the net proceeds of the Settlement to the Settlement Class ("Plan of Allocation" or "Plan").[1]

## I. PRELIMINARY STATEMENT

Subject to Court approval, Plaintiffs have agreed to settle all claims asserted in the Action against Defendants for $450,000,000 in cash. As detailed in the Joint Declaration and summarized below, the Settlement: (i) is the culmination of four years of highly contentious and vigorous litigation efforts; (ii) is the product of hard-fought settlement negotiations under the guidance of an experienced mediator (and former federal judge) and ultimately, the Parties' acceptance of a mediator's recommendation to resolve the Action for the Settlement Amount; and (iii) represents a meaningful percentage of the Settlement Class's estimated maximum damages. Notably, this Settlement ranks as the largest pre-trial securities class action settlement ever achieved in this Circuit. Plaintiffs respectfully submit that the Settlement provides an excellent result for the Settlement Class and readily satisfies all of the standards for final approval under Rule 23(e)(2).

At the time of settlement, the Parties had substantially completed an arduous and highly

[1] Unless otherwise defined, all capitalized terms have the meanings set forth in the Stipulation or in the Joint Declaration of Sharan Nirmul and Salvatore J. Graziano ("Joint Declaration" or "Joint Decl.") filed herewith. The Joint Declaration is an integral part of this submission and, for the sake of brevity herein, Plaintiffs respectfully refer the Court to it for a detailed description of, *inter alia*: the claims asserted, the procedural history, the settlement negotiations, the risks of continued litigation, the notice campaign, and the Plan. Citations to "¶ __" herein refer to paragraphs in the Joint Declaration. All internal citations, quotation marks, and footnotes have been omitted and emphasis has been added unless otherwise indicated.

contested document discovery process through which over 15 million pages of documents had been produced, class certification briefing and related expert discovery had been completed, and the Parties were on the eve of beginning fact depositions. Plaintiffs' Counsel had reviewed and analyzed the vast majority of the documentary evidence and had conducted extensive deposition preparation. As a result of these efforts, Plaintiffs and Lead Counsel had a well-developed understanding of the strengths and weaknesses of their claims at the time of settlement.

While Plaintiffs believe the Settlement Class's claims are meritorious and supported by their extensive investigative efforts and evidence developed during discovery, they also recognized that there were substantial risks to further litigation. As discussed in the Joint Declaration, this was an uncommonly complex case because of the scope of the alleged fraud. Plaintiffs understood that summary judgment and trial would present complex issues relating to expert testimony and evidentiary proof—including as to Defendants' scienter, whether the alleged misstatements caused consistent inflation in Kraft Heinz's stock price, the extent to which the Company's business lines were impacted by Defendants' alleged fraud, and whether Plaintiffs' theory of loss causation that would rely on expert testimony could withstand *in limine* motions, among other things.

Adverse determinations on any of these issues at summary judgment, trial, or in likely appeals that would follow could have precluded *any* recovery for the Settlement Class, let alone a recovery greater than the Settlement Amount. The Settlement avoids these risks (and others)—as well as the delay and expense of continued litigation—while providing a substantial (and certain) near-term benefit to the Settlement Class. Moreover, the Settlement is not "claims-made." Rather, all Settlement proceeds, after deducting Court-approved fees and costs, will be distributed to Settlement Class Members who submit valid Claims.

In May, the Court preliminarily approved the Settlement, finding it likely that the Court

could approve the Settlement at final approval. ECF No. 478, ¶ 4. The Settlement has the full support of the sophisticated investor Plaintiffs, and the reaction of the Settlement Class to date has been positive. While the deadline for objections has not yet passed, following an extensive notice campaign, there have been no objections to the Settlement or the Plan of Allocation.[2]

Given the foregoing considerations and the factors addressed below, Plaintiffs and Lead Counsel respectfully submit that: (i) the Settlement meets the standards for final approval under Rule 23, and is a fair, reasonable, and adequate result for the Settlement Class; and (ii) the Plan is a fair and reasonable method for allocating the Net Settlement Fund to Settlement Class Members who submit valid Claims based on losses they suffered as a result of the alleged fraud.

## II. THE SETTLEMENT WARRANTS FINAL APPROVAL

Rule 23(e)(2) requires judicial approval of any class action settlement. Courts in this Circuit "naturally favor the settlement of class action litigation." *Isby v. Bayh*, 75 F.3d 1191, 1196 (7th Cir. 1996). "Settlement of the complex disputes often involved in class actions minimizes the litigation expenses of both parties and also reduces the strain such litigation imposes upon already scarce judicial resources." *In re Sears, Roebuck & Co. Front-Loading Washer Prods. Liab. Litig.*, 2016 WL 772785, at *6 (N.D. Ill. Feb. 29, 2016).

Under Rule 23(e)(2), the Court should approve a proposed class action settlement if it finds it "fair, reasonable, and adequate." This determination involves considering whether: "(A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm's length; (C) the relief provided for the class is adequate, taking into account: [among other things,] (i) the costs, risks, and delay of trial and appeal . . .; and (D) the proposal

[2] To date, there has been one objection to Lead Counsel's fee request and one objection to the claims process. Both of these objections, and any others received after this submission, will be addressed in Plaintiffs' reply papers to be filed with the Court on September 5, 2023.

treats class members equitably relative to each other." *Id*.

Further, consistent with this guidance, the Seventh Circuit has identified the following six factors for courts to consider in deciding whether to approve a class action settlement:

> (1) the strength of the case for plaintiffs on the merits, balanced against the extent of settlement offer; (2) the complexity, length, and expense of further litigation; (3) the amount of opposition to the settlement; (4) the reaction of members of the class to the settlement; (5) the opinion of competent counsel; and (6) stage of the proceedings and the amount of discovery completed.

*Wong v. Accretive Health, Inc.*, 773 F.3d 859, 863 (7th Cir. 2014); *see also Synfuel Techs., Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 653 (7th Cir. 2006).[3] The approval proceedings, however, should not be transformed into an abbreviated trial on the merits. *See, e.g., Mars Steel Corp. v. Continental Ill. Nat'l Bank & Tr. Co. of Chi.*, 834 F.2d 677, 684 (7th Cir. 1987).

As discussed below, the Settlement is fair, reasonable, adequate, and warrants final approval under all of the Rule 23(e)(2) and Seventh Circuit factors.

### A. Plaintiffs and Lead Counsel Have Adequately Represented the Settlement Class

In determining whether to approve a class action settlement, the Court should first consider whether Plaintiffs and Lead Counsel "have adequately represented the class." Fed. R. Civ. P. 23(e)(2)(A). This factor weighs in favor of approving the Settlement.

Plaintiffs have adequately represented the Settlement Class in their vigorous prosecution of the Action. Among their efforts, Plaintiffs have communicated regularly with Lead Counsel about case developments and strategy, reviewed and commented on pleadings and briefs, gathered

[3] The Advisory Committee Notes to the 2018 amendments to Rule 23 explain that the four Rule 23(e)(2) factors are not intended to "displace" any factor previously adopted by the courts, but "rather to focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approve the proposal." Fed. R. Civ. P. 23 Advisory Committee Notes to 2018 Amendments, Subdivision (e)(2). Accordingly, Plaintiffs discuss below the fairness, reasonableness, and adequacy of the Settlement principally in relation to the four Rule 23(e)(2) factors, but also discuss the application of the non-duplicative factors articulated by the Seventh Circuit in *Wong*.

and reviewed documents and information in response to Defendants' discovery requests, prepared and sat for depositions, and participated in settlement negotiations.[4] In addition, Plaintiffs—whose claims are based on a common course of alleged wrongdoing by Defendants and are typical of other Settlement Class Members—have no interests antagonistic to the Settlement Class.[5]

Likewise, Plaintiffs retained counsel highly experienced in securities litigation. ¶ 177.[6] Here, Lead Counsel actively pursued the Settlement Class's claims and negotiated a favorable Settlement through hard-fought negotiations and formal mediation. ¶¶ 117-22; *see also Snyder v. Ocwen Loan Servicing, LLC*, 2019 WL 2103379, at *4 (N.D. Ill. May 14, 2019) (Rule 23(e)(2)(A) met where "plaintiffs participated in the case diligently" and "class counsel fought hard throughout the litigation and pursued mediation when it appeared to be an advisable and feasible alternative").

### B. The Settlement Was Negotiated at Arm's Length by Competent Counsel with the Assistance of an Experienced Mediator

The Court should next consider whether the settlement was "negotiated at arm's-length." *See* Rule 23(e)(2)(B). This includes considering related circumstances including: (i) "the opinion of competent counsel"; (ii) "stage of the proceedings and the amount of discovery completed"; and (iii) the involvement of a mediator. *Wong*, 773 F.3d at 863-64. These considerations support approving the Settlement. *See id.* at 863-64.

In this Circuit, "a settlement proposal arrived at after arms-length negotiations by fully informed, experienced and competent counsel may be properly presumed to be fair and adequate." *Mangone v. First USA Bank*, 206 F.R.D. 222, 226 (S.D. Ill. 2001). This presumption is further

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[4] *See* Joint Decl., Ex. 1 (Olofsson/Sydstrand Decl.), ¶ 7; Ex. 2 (Riechwald Decl.), ¶ 7; Ex. 3 (Booker Decl.), ¶ 7.

[5] *See In re Polaroid ERISA Litig.*, 240 F.R.D. 65, 77 (S.D.N.Y. 2006) ("Where plaintiffs and class members share the common goal of maximizing recovery, there is no conflict of interest between the class representatives and other class members.").

[6] *See also* Lead Counsel resumes attached to the Joint Declaration as Exhibits 6A-4 and 6B-3.

supported when a neutral mediator is involved. *See Todd v. STAAR Surgical Co.*, 2017 WL 4877417, at *2 (C.D. Cal. Oct. 24, 2017) ("The assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive."). Here, the Parties' settlement negotiations included two formal mediation sessions with former United States District Judge Layn Phillips and the preparation of detailed opening and reply mediation statements addressing liability and damages. ¶¶ 118-20. Although unable to reach agreement at the conclusion of the second mediation session, the Parties continued to engage in negotiations with Judge Phillips' assistance. ¶ 122. These negotiations culminated in a mediator's recommendation from Judge Phillips to settle the Action for $450 million, which the Parties accepted on February 13, 2023. *Id*.

Moreover, the proceedings had reached a stage where Plaintiffs and Lead Counsel could make a well-founded evaluation of the claims and propriety of settlement. Lead Counsel had: (i) conducted a comprehensive investigation, including interviews with hundreds of former Kraft Heinz employees (¶¶ 28-32, 34, 36); (ii) drafted two detailed complaints based on their investigation (¶¶ 33, 39); (iii) successfully opposed Defendants' motions to dismiss the AC (¶¶ 40-49); (iv) engaged in comprehensive fact discovery, including numerous meet and confers with Defendants over the scope of discovery, reviewing a substantial portion of the more than 15 million pages of documents produced by Defendants and nonparties, and preparing to take depositions (¶¶ 51-100); (v) moved for class certification and assisted in the preparation of two supporting expert reports (¶¶ 107-13); (vi) prepared for and defended depositions of Plaintiffs' representatives and participated in depositions of the Parties' experts in connection with class certification (¶¶ 106, 112); and (vii) consulted with multiple experts at various stages of the case (¶¶ 114-16).[7] Additionally, the Parties' settlement negotiations, including the facts and arguments set forth in

[7] The Joint Declaration provides additional detail on Lead Counsel's litigation efforts. ¶¶ 28-116.

their respective mediation submissions and asserted during the sessions with Judge Phillips, further informed the Parties of the strength of each side's arguments. ¶¶ 117-22. As a result, Plaintiffs and Lead Counsel were well informed of the strengths and risks of the case when they agreed to the Settlement. The endorsement of the Settlement by experienced counsel is entitled to "significant weight." *In re Mex. Money Transfer Litig. (W. Union & Orlandi Valuta)*, 164 F. Supp. 2d 1002, 1020 (N.D. Ill. 2000) ("The court places significant weight on the unanimously strong endorsement of these settlements by [Settling] Plaintiffs' well respected attorneys.").

### C. The Settlement Provides the Settlement Class Adequate Relief, Considering the Costs, Risks, and Delay of Litigation and Other Relevant Factors

The Court should next consider whether "the relief provided for the class is adequate, taking into account . . . the costs, risks, and delay of trial and appeal," as well as other relevant factors. Fed R. Civ. P. 23(e)(2)(C). Rule 23(e)(2)(C) encompasses two of the factors traditionally considered by the Seventh Circuit when evaluating a proposed class action settlement: (i) the strength of the case for plaintiffs on the merits, balanced against the extent of the settlement offer; and (ii) the complexity, length, and expense of further litigation. *See Wong*, 773 F.3d at 863-64. As discussed below, these factors strongly support the Settlement's approval.

#### 1. Strength of Plaintiffs' Case Compared to Amount of Settlement

When deciding whether to approve a proposed class action settlement under Seventh Circuit precedent, the primary consideration is "the strength of the plaintiff's case on the merits balanced against the amount offered in settlement." *Snyder*, 2019 WL 2103379, at *6. Under this factor, courts consider whether the settlement is reasonable in light of the risks of continued litigation. *See In re AT & T Mobility Wireless Data Servs. Sales Tax Litig.*, 789 F. Supp. 2d 935, 959, 961, 963-64 (N.D. Ill. 2011); *see also Sears*, 2016 WL 772785, at *7 (approval does not require a settlement be "the best possible deal for plaintiffs" or that "the class has received the

same benefit from the settlement as they would have recovered from a trial"); *Great Neck Cap. Appreciation Inv. P'ship, L.P. v. PricewaterhouseCoopers, L.L.P.*, 212 F.R.D. 400, 409-10 (E.D. Wis. 2002) ("The mere possibility that the class might receive more if the case were fully litigated is not a good reason for disapproving the settlement. . . . If the case were fully litigated there is also a possibility that plaintiffs could receive less.").

By any measure, the $450 million Settlement is a favorable result—providing a near-term, cash benefit to the Settlement Class while avoiding the risks of further litigation. Defendants have denied their culpability throughout the Action, and would continue to assert strong defenses to all of Plaintiffs' claims.[8] These defenses, if accepted by the Court (or a jury at trial) could have foreclosed *any* recovery for the Settlement Class. And, even if Plaintiffs prevailed at trial, Defendants likely would have appealed that verdict, creating further risk and delay.[9]

As detailed in the Joint Declaration, Plaintiffs' claims concerned allegations that Defendants had indiscriminately cut costs throughout Kraft Heinz's sprawling businesses that had the effect of temporarily boosting EBITDA but causing permanent harm to the value of Kraft Heinz's brands. ¶ 11. Plaintiffs would need to prove, among other things, why Defendants, who owned or controlled 50% of the equity of Kraft Heinz, would take actions that arguably would adversely impact the value of their own investment. ¶ 12.[10] Further, the large number of false

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[8] The risks of continued litigation are detailed in the Joint Declaration at Paragraphs 126-53.

[9] There is a real risk that even a successful trial verdict could be overturned on appeal. *See, e.g., In re BankAtlantic Bancorp, Inc. Sec. Litig.*, 2011 WL 1585605, at *1 (S.D. Fla. Apr. 25, 2011) (overturning an estimated $42 million jury verdict in favor of class and granting judgment as a matter of law to defendants), *aff'd on other grounds sub nom. Hubbard v. BankAtlantic Bancorp, Inc. Sec. Litig.*, 688 F.3d 713 (11th Cir. 2012); *Robbins v. Koger Props., Inc.*, 116 F.3d 1441 (11th Cir. 1997) (reversing $81 million jury verdict after 19-day trial and dismissing case with prejudice).

[10] While one of Plaintiffs' principal counterarguments in this regard was that 3G Capital sold over $1 billion in stock during the Class Period, Defendants had challenging arguments in response, including that 3G Capital's substantial sale had been undertaken to fulfill redemption requests from its outside limited partners and thus, 3G Capital did not directly profit from the sale.

statements at issue—over 100 statements, spanning four years—together with the nature of the corrective disclosures, which involved numerous separate pieces of negative news about Kraft Heinz's operations (both fraud- and non-fraud-related), created significant risks to establishing loss causation and proving damages at trial.

The Settlement Amount represents a significant percentage (i.e., more than 10.4% to 14%) of the Settlement Class's ***maximum*** damages as estimated by Plaintiffs' damages expert, assuming Plaintiffs succeeded in proving their claims at summary judgment, trial, and through any appeals. This also assumes that a jury would find that the alleged fraud began in February 2018 when the Company dramatically escalated the cost savings required to meet its earnings targets (implying maximum damages of $3.2 billion) or, less probably, in February 2017 after the Company unsuccessfully sought to acquire Unilever (implying maximum damages of $4.3 billion). Even to achieve those theoretical maximum amounts would require that Plaintiffs prove every aspect of their broad case for those time periods—regarding misstatements concerning, *inter alia*, cost savings targets, brand reinvestment, manipulated procurement contracts, relationships with the Company's Canadian customers, and improper accounting for intangible assets. If all aspects of the fraud were not proved, recoverable damages would be lower.[11] This recovery is consistent with, or larger than, damage percentages recovered in numerous other securities class action settlements within this Circuit.[12] "The adequacy of this amount is reinforced by the fact that it was

[11] Even assuming Plaintiffs were victorious in ***every*** aspect of their case, including establishing that the maximum theoretical amount of artificial inflation was present in the stock from the beginning of the Class Period in November 2015, the Settlement represents a meaningful percentage of absolute maximum damages (approximately 8.7%). ¶ 170.

[12] *See, e.g.*, *Shah v. Zimmer Biomet Holdings, Inc.*, 2020 WL 5627171, at *5 (N.D. Ind. Sept. 18, 2020) (approving settlement recovering roughly 8% of maximum damages); *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 583 (N.D. Ill. 2011) (approving settlement recovering 10% of class damages, and noting courts have approved class settlements below this percentage); *Goldsmith v. Tech. Sols. Co.*, 1995 WL 17009594, at *5 (N.D. Ill. Oct. 10, 1995) (approving settlement recovering 6.1% of class damages).

originally recommended by Judge Phillips, an objective and informed third-party during the mediation process." *Roberti v. OSI Sys., Inc.*, 2015 WL 8329916, at *4 (C.D. Cal. Dec. 8, 2015).

**2. The Complexity, Length, and Expense of Further Litigation**

In determining a settlement's fairness, courts consider the likely "complexity, length, and expense of further litigation." *Wong*, 773 F.3d at 863. Courts routinely recognize that securities class actions involve complex factual and legal issues, and that litigation of these actions is lengthy and expensive. *See Retsky Family Ltd. P'ship v. Price Waterhouse LLP*, 2001 WL 1568856, at *2 (N.D. Ill. Dec. 10, 2001) ("Securities fraud litigation is long, complex and uncertain.").

This Action was no exception. On the contrary, it was unusually complicated—even for a securities class action—alleging 100+ false statements spanning four years and involving several distinct strands of claims related to Kraft Heinz's procurement division, its accounting practices and financial book value of its numerous brands and reporting units, and its cost-cutting measures, among others. ¶¶ 13, 132. Further, the expense of litigating this Action exceeded $2.6 million without any summary judgment or trial expenses. Continued litigation would have increased expenses considerably. Moreover, litigating this Action through the completion of discovery, including depositions, a ruling on class certification, summary judgment, trial, and appeals would have required substantial time.[13] *See Hartless v. Clorox Co.*, 273 F.R.D. 630, 640 (S.D. Cal. 2011) ("Considering these risks, expenses and delays, an immediate and certain recovery for class members . . . favors settlement of this action."), *aff'd in part*, 473 F. App'x 716 (9th Cir. 2012). Notably, while Kraft Heinz restated its financials related to its procurement division during the Class Period, that restatement was a very small part of the overall claims at issue. The Company

[13] For example, in a similar action tried to a jury verdict in this Court, the time from verdict to final judgment took *seven* years. *See, e.g.*, Verdict Form, *Jaffe Pension Plan v. Household Int'l., Inc.*, No. 1:02-cv-05893 (N.D. Ill. May 7, 2009), ECF No. 1611 & Final Judgment and Order of Dismissal with Prejudice, *id*. (N.D. Ill. Nov. 10, 2016), ECF No. 2267 (Ex. 8).

never restated its financials concerning the timing of its massive impairment of its intangible assets (one of the principal disclosures at issue). Similarly, while the SEC had reached a settlement with the Company concerning procurement, this settlement indicated very little about the strength of the bulk of Plaintiffs' case, including allegations related to the goodwill impairment.

**D. The Remaining Rule 23(e)(2) Factors Support Final Approval**

Rule 23(e)(2) also instructs courts to consider: (i) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class member claims; (ii) the terms of any proposed award of attorney's fees, including the timing of payment; (iii) any other agreement made in connection with the proposed settlement; and (iv) whether class members are treated equitably relative to each other. *See* Fed. R. Civ. P. 23(e)(2)(C)(ii)-(iv) & (e)(2)(D). These factors also support final approval of the Settlement.

*First*, the procedures for processing Claims and distributing the Settlement proceeds to eligible Claimants are well-established, effective methods that have been widely used in securities class action litigation. Here, the Settlement proceeds will be distributed to Settlement Class Members who submit eligible Claims to the Claims Administrator, JND Legal Administration ("JND"). JND will review and process Claims under Lead Counsel's supervision, provide Claimants with an opportunity to cure any deficiencies in their Claims or request Court review of the denial of their Claims, and then mail or wire Authorized Claimants their *pro rata* share of the Net Settlement Fund (as calculated under the Plan of Allocation) upon approval of the Court. Importantly, none of the Settlement proceeds will revert to Defendants. *See* Stip., ¶ 14.

*Second*, the relief provided by the Settlement remains adequate when considering the terms of the proposed award of attorneys' fees, including the timing of any such payment. As discussed in the Fee and Expense Memorandum, the 20% fee request, made with Plaintiffs' approval and to be paid only upon the Court's approval, is reasonable in light of Lead Counsel's substantial efforts

over the past four years, the risks in the litigation, and comparable awards in this Circuit and elsewhere.[14] Indeed, if awarded, a 20% fee will result in a lodestar multiplier of approximately 1.7. ¶ 175. Further, approval of attorneys' fees is entirely separate from approval of the Settlement, and neither Plaintiffs nor Lead Counsel may terminate the Settlement based on this Court's or any appellate court's ruling with respect to fees. *See* Stip., ¶ 17.[15]

*Third*, as previously disclosed, the only other agreement made in connection with the Settlement (other than the Stipulation and Term Sheet) is the Parties' confidential Supplemental Agreement, which sets forth the conditions under which the Kraft Heinz Defendants (provided they agree) and 3G Capital (provided they agree) can terminate the Settlement based on requests for exclusion. ¶ 124. This type of agreement is standard in securities class actions and has no negative impact on the fairness of the Settlement. *See, e.g.*, *In re Signet Jewelers Ltd. Sec. Litig.*, 2020 WL 4196468, at *13 (S.D.N.Y. July 21, 2020).

*Lastly*, as discussed below in Part III, under the Plan, Authorized Claimants will receive their *pro rata* share of the Net Settlement Fund based on their transactions in Kraft Heinz Securities. Plaintiffs will receive precisely the same level of *pro rata* recovery (based on their Recognized Claims as calculated under the Plan) as all other Settlement Class Members. Accordingly, the Settlement treats Settlement Class Members equitably relative to one another.

**E. The Reaction of the Settlement Class to Date**

Two additional related factors that courts in the Seventh Circuit consider when assessing a proposed settlement are "the amount of opposition to the settlement" and "the reaction of members

[14] Lead Counsel also seek payment of Plaintiffs' Counsel's Litigation Expenses in the total amount of $2,656,091.93 and Plaintiffs' costs in the aggregate amount of $114,340.00. ¶ 187.

[15] Attorneys' fees will be paid upon issuance of the award. *Id.* This timing is reasonable and consistent with common practice in class action cases. *See Wong v. Accretive Health, Inc.*, 2014 WL 7717579, at *1 (N.D. Ill. Apr. 30, 2014) ("The awarded attorneys' fees and expenses, and interest earned thereon, shall be paid to Lead Counsel from the Settlement Fund *immediately* after the date this Order is executed . . . .").

of the class to the settlement." *Wong*, 773 F.3d at 863. The objection deadline is August 22, 2023. To date, there have been no objections to the adequacy of the Settlement. ¶ 15. Plaintiffs will address all objections received in their reply submission to be filed on September 5, 2023.

In sum, all of the factors to be considered under Rule 23(e)(2) and Seventh Circuit case law support approving the Settlement as fair, reasonable, and adequate.

## III. THE COURT SHOULD APPROVE THE PLAN OF ALLOCATION

A plan for allocating settlement proceeds under Rule 23 is evaluated under the same standard of review applicable to the settlement as a whole—the plan must be "fair, reasonable and adequate." *Retsky*, 2001 WL 1568856, at *3. Further, "[w]hen formulated by competent and experienced counsel, a plan for allocation of net settlement proceeds need have only a reasonable, rational basis in order to be fair and reasonable." *Shah*, 2020 WL 5627171, at *6. Generally, a plan of allocation that reimburses class members based on the relative strength and value of their claims is reasonable. *See In re IMAX Sec. Litig.*, 283 F.R.D. 178, 192 (S.D.N.Y. 2012).

Here, the Plan was developed by Lead Counsel in consultation with Plaintiffs' damages expert. ¶ 162. The Plan is designed to distribute the Net Settlement Fund equitably to Settlement Class Members who timely submit valid Claims demonstrating they suffered economic losses as a result of Defendants' alleged violations of the federal securities laws set forth in the Action. *Id*.

The Plan is based upon the estimated amount of artificial inflation (or deflation) in the price of Kraft Heinz Securities over the course of the Class Period. *Id*. To have a loss with respect to common stock and call options, a Claimant must have purchased/acquired their stock/options during the Class Period and held such stock/options over at least one of the alleged corrective disclosures (i.e., on November 1, 2018 (after market close), February 21, 2019 (after market close),

and August 8, 2019 (prior to market open)). ¶¶ 21, 163.[16] Further, a Claimant's loss will depend upon several factors, including the date(s) when the Claimant purchased/acquired/sold their Kraft Heinz Securities during the Class Period and at what price(s), taking into account the PSLRA's statutory limitation on recoverable damages. *Id.* Authorized Claimants will recover their proportional "pro rata" amount of the Net Settlement Fund based on their calculated loss. *See T.K. Through LeShore v. Bytedance Tech. Co., Ltd.*, 2022 WL 888943, at *16 (N.D. Ill. Mar. 25, 2022) ("[Pro rata] distribution plans indicate equitable treatment of class members relative to each other.").[17] Accordingly, Plaintiffs' trading activity is treated in the same manner.

The Plan will result in a fair and equitable distribution of the Settlement proceeds among Settlement Class Members who suffered losses as a result of Defendants' alleged conduct. To date, there have been no objections to the Plan. ¶ 166. For these reasons, the Plan should be approved.

## IV. THE COURT SHOULD CERTIFY THE SETTLEMENT CLASS

As set forth in Plaintiffs' preliminary approval motion, the Settlement Class satisfies all of the requirements of Rules 23(a) and (b)(3). ECF No. 475-1 at 11-14; *see also* ECF No. 478, ¶¶ 1-3 (finding the Court will likely be able to certify the Settlement Class at final approval). None of the facts supporting certification of the Settlement Class have changed since Plaintiffs' preliminary approval motion. Accordingly, Plaintiffs respectfully request that the Court certify the Settlement Class under Rules 23(a) and (b)(3) for purposes of effectuating the Settlement.

## V. NOTICE SATISFIED RULE 23, DUE PROCESS, AND THE PSLRA

Plaintiffs have provided the Settlement Class with adequate notice of the Settlement. Here,

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[16] Likewise, to have a loss with respect to Kraft Heinz put options, a Claimant must have sold (written) their options during the Class Period and such options must have remained open through at least one of the alleged corrective disclosures. *Id.*

[17] Under the Plan, the Settlement proceeds available for Kraft Heinz options shall be limited to a total amount equal to 4% of the Net Settlement Fund. ¶ 163.

notice satisfies both: (i) Rule 23, as it was "the best notice . . . practicable under the circumstances" and directed "in a reasonable manner to all class members who would be bound by the" Settlement, Fed. R. Civ. P. 23(c)(2)(B) & (e)(1)(B); *see also Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173-75 (1974); and (ii) due process, as it was "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections," *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950). Collectively, the notices also provide all of the information specifically required by Rule 23 and the PSLRA. *See* ECF No. 475-1 at 14-15; *see also* Jt. Decl., Ex. 5 (Segura Decl.), Exs. 1-3.

JND has mailed 1,653,764 Postcard Notices and 5,360 Notice Packets to potential Settlement Class Members and Nominees. *See* Segura Decl., ¶ 11. JND also caused the Summary Notice to be published, and maintains the Settlement Website to provide information about the Settlement, as well as downloadable copies of the Notice, Claim Form, and other relevant documents. *Id.*, ¶¶ 12, 15. Defendants also issued CAFA notice. ¶ 157 n21.

In sum, this notice campaign provides sufficient information for Settlement Class Members to make informed decisions regarding the Settlement, fairly apprises them of their rights with respect to the Settlement, represents the best notice practicable under the circumstances, and complies with the Court's Preliminary Approval Order, Rule 23, the PSLRA, and due process.[18]

## VI. CONCLUSION

For the reasons herein and in the Joint Declaration, Plaintiffs respectfully request that the Court grant final approval of the Settlement and approve the Plan of Allocation.

[18] Comparable notice programs are routinely approved by Courts in this Circuit. *See, e.g.*, *Shah*, 2020 WL 5627171, at *6 (approving similar notice program); *Beezley v. Fenix Parts, Inc.*, 2020 WL 4581733, at *2 (N.D. Ill. Aug. 7, 2020) (same).

Dated: August 8, 2023

Respectfully submitted,

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